

Appl. No. 09/688,672
Amdt. dated October 6, 2006
Reply to Office Action of July 28, 2006 and Advisory
Action of October 12, 2005

PATENT

REMARKS

I. Status of the Claims

Claims 1-8, 11-27, 105-109, and 111-115 are pending in this application. In the Office Action of July 28, 2006, the Examiner indicated the allowability of claims 1-8, 11-17, 19, 105-109, and 111-115. Upon entry of the present amendment, claims 18 and 22 are amended to delete reference to TbRa3 (SEQ ID NO:6), 38kD (SEQ ID NO:8), and Tb38-1 (MTb11) (SEQ ID NO:10). No new matter is introduced.

II. Claim Rejections

A. Obviousness-Type of Double Patenting

Claims 18 and 20-23 were rejected under the judicially created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 1-6, 10, and 11 of U.S. Patent No. 6,592,877 ("the '877 patent"). Applicants respectfully traverse the rejection in light of the present amendment.

The subject matter of claims 1-6, 10, and 11 of the '877 patent is an isolated fusion protein comprising four *M. tuberculosis* antigens: TbRa3, Tb38-1, TbH4, and 38kD, as well as a composition containing the fusion protein. As amended, all reference to the *M. tuberculosis* antigens TbRa3, Tb38-1, and 38kD is deleted from claims 18 and 22. Thus, the composition of claims 18 and 20-23 cannot be obvious over the fusion protein of TbRa3, Tb38-1, TbH9, and 38kD, which is claimed in the '877 patent.

The withdrawal of the obviousness-type double patenting rejection is therefore respectfully requested.

B. 35 U.S.C. §112, Second Paragraph

Claims 24-27 were rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite, due to their dependency from rejected base claims. Because the only other claim rejection, the obviousness-type double patenting rejection, has been fully addressed,

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in view of the present amendment and discussion in the last section, the withdrawal of the rejection of claims 24-27 under 35 U.S.C. §112, second paragraph, is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Chuan Gao
Reg. No. 54,111

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
CG:cg
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